

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

NORTHEAST DRILLING, INC.,)	
PLAINTIFF)	
)	
v.)	CIVIL No. 99-173-P-H
)	
INNER SPACE SERVICES, INC., ET AL.,)	
DEFENDANTS)	

INNER SPACE SERVICES, INC.,)	
PLAINTIFF)	
)	
v.)	CIVIL No. 00-380-P-H
)	
GUY F. ATKINSON CONSTRUCTION)	
CORPORATION D/B/A ATKINSON)	
CONSTRUCTION, ET AL.,)	
DEFENDANTS)	

ORDER ON PENDING MOTIONS

1. The motion to consolidate is **DENIED**.

2. The motion for relief from judgment in Civil No. 99-173-P-H is **DENIED**.

The allegedly perjured testimony concerned a hotly contested issue on which abundant evidence was submitted. Putting aside the question whether the motion was brought in a timely fashion, I conclude that the moving parties have not presented “evidence of facts in existence at the time of trial of which [they were] excusably ignorant.” Rivera v. M/T Fossarina, 840 F.2d 152, 156 (1st Cir. 1988) (quoting Brown v. Pennsylvania R.R. Co., 282 F.2d 522, 526-27 (3d Cir. 1960)).

3. The motion for stay or alternative relief in Civil No. 99-173-P-H is **Moot** in light of my rulings in this Order.

4. The objections to the Magistrate Judge's Recommended Decision in Civil No. 00-380-P-H are **OVERRULED**. I have undertaken a *de novo* review of his decision and find it to be correct in all respects. Civil No. 00-380-P-H is **DISMISSED** as to Northeast Drilling, Inc. ("NDI") and Ranger. Guy F. Atkinson Construction Corporation d/b/a Atkinson Construction's ("Atkinson") motion to compel arbitration is **GRANTED** and the lawsuit is **STAYED** insofar as the claims against Atkinson are concerned, pending completion of the arbitration.

5. The motion to amend in Civil No. 00-380-P-H is **DENIED**. The motion seeks to amend the complaint to assert a claim against Atkinson and NDI "by reason of the perjury of Timothy Daniels in Civil No. 99-173-P-H" pursuant to 14 M.R.S.A. § 870. Mot. to Amend at 1. The Maine Law Court has stated that this statute permitting a civil action for perjury is to be narrowly construed. See Spickler v. Greenberg, 644 A.2d 469, 472 (Me. 1994). Putting aside whether the plaintiff can state a claim against Daniels himself (no such attempt is made), the proposed amended complaint fails to state a cause of action against Atkinson and NDI. There is no suggestion that either Atkinson or NDI knew that Daniels would commit perjury. The most that the amended complaint asserts is that NDI introduced the testimony, ¶ 76(E), and that Atkinson was "confederate in the perjury," ¶ 69(E), a wholly conclusory assertion merely quoting the language of the statute and failing to allege any facts to support it. Amending the complaint would therefore be futile. See, e.g., Maurice v. State Farm Mutual Auto. Ins. Co., 235 F.3d 7, 11 (1st Cir. 2000) (affirming denial of amendment where it would have been

futile); Judge v. City of Lowell, 160 F.3d 67, 80 (1st Cir. 1998) (affirming denial of proposed amendment where it would have been futile). The motion is **DENIED**.

6. The motion of Northeast Drilling, Inc. and Ranger Insurance Company ("Ranger") for sanctions pursuant to Fed. R. Civ. P. 11 is **GRANTED**. This controversy was fully litigated through motion practice and a lengthy bench trial and an appeal to the Court of Appeals for the First Circuit. It is always disappointing to lose a case in which a party (and its lawyers) feel strongly that it is in the right, but the judicial process contemplates matters coming to an end. There was simply no adequate ground for filing the amended complaint against these parties in Civil No. 00-380-P-H. The case was clearly barred by *res judicata*.

The claims and legal contentions are not "warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law." Fed. R. Civ. P. 11(b)(2). Inner Space Services, Inc. ("ISSI") had a full opportunity to present all its issues and arguments in Civil No. 99-173-P-H. Unfortunately for it, it lost its case at trial and on appeal, but that should have been the end of the matter. Because the violation is of Rule 11(b)(2), the award can only be against ISSI's lawyers. Fed. R. Civ. P. 11(c)(2)(A). They are **ORDERED** to pay the reasonable legal fees of NDI and Ranger in resisting the amended complaint in Civil No. 00-380-P-H. NDI and Ranger shall submit their reasonable attorney fees with supporting documentation by May 25, 2001. The parties thereafter shall meet and confer. If agreement is not forthcoming, ISSI's

lawyers shall file a response by June 22, 2001. NDI and Ranger shall reply by June 29, 2001.

7. NDI's request for sanctions under 28 U.S.C. § 1927 is **DENIED**.

8. Atkinson's request for sanctions under 28 U.S.C. § 1927 is **DENIED**.

So ORDERED.

DATED THIS 11TH DAY OF MAY, 2001.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
Civil Docket For Case #: 99-CV-173

NORTHEAST DRILLING INC.
plaintiff

JERROL A. CROUTER
DEIRDRE M. SMITH, ESQ.
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v.

INNER SPACE SERVICES INC.
defendant

NEAL F. PRATT, ESQ.
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NATIONAL GRANGE MUTUAL
INSURANCE COMPANY
defendant

NEAL F. PRATT, ESQ.
(see above)

RANGER INSURANCE COMPANY INC
counter-defendant

NEAL F. PRATT, ESQ.
(see above)

U.S. District Court
District of Maine (Portland)
Civil Docket For Case #: 00-CV-380

INNER SPACE SERVICES INC.
plaintiff

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RICHARD L. NEUMEIER, ESQ.
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v.

GUY F ATKINSON CONSTRUCTION
CORPORATION
d/b/a ATKINSON CONSTRUCTION
defendant

PETER G. CARY, ESQ.
MITTEL, ASEN, HUNTER & CARY LLC
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NORTHEAST DRILLING INC.
defendant

JERROL A. CROUTER, ESQ.
(see above)

RANGER INSURANCE COMPANY INC.
defendant

JERROL A. CROUTER, ESQ.
(see above)